

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4         UNITED STATES OF AMERICA,)  
5                                  )  
6         PLAINTIFF,              )                   CASE NO. 2:15-CR-235-1  
7                                  )  
8         vs.                     )  
9         MARK A. EUBANKS,        )  
10                                )  
11         DEFENDANT.            )  
12                                )

13                                REDACTED {PER INSTRUCTION OF THE COURT}  
14                                TRANSCRIPT OF PROCEEDINGS OF CHANGE OF PLEA  
15                                BEFORE THE HONORABLE MICHAEL H. WATSON  
16                                WEDNESDAY, FEBRUARY 17, 2016; 3:00 P.M.  
17                                COLUMBUS, OHIO

18                                FOR THE PLAINTIFF:  
19                                US ATTORNEY'S OFFICE  
20                                By: MICHAEL J. HUNTER, ESQ.  
21                                303 MARCONI BOULEVARD, 2ND FLOOR  
22                                COLUMBUS, OH 43215

23                                FOR THE DEFENDANT:  
24                                By: KEITH A. YEAZEL, ESQ.  
25                                905 SOUTH HIGH STREET  
                                  COLUMBUS, OH 43206

26                                - - -

27                                Proceedings recorded by mechanical stenography, transcript  
28                                produced by computer.

29                                GEORGINA L. WELLS  
30                                FEDERAL OFFICIAL COURT REPORTER  
31                                85 MARCONI BOULEVARD, ROOM 121  
32                                COLUMBUS, OHIO 43215

## Wednesday Afternoon Session,

February 17, 2016.

— — —

COURTROOM DEPUTY CLERK: This is Case Number  
2:15-cr-235, Defendant Number 1, the United States of America  
v. Mark Eubanks. Counsel, please enter your appearances.

MR. HUNTER: Good afternoon, Your Honor. Michael Hunter on behalf of the United States.

MR. YEAZEL: Keith Yeazel on behalf of  
Mr. Eubanks, who is present in the courtroom.

Good afternoon, Your Honor.

THE COURT: Good afternoon. Mr. Eubanks, good afternoon to you.

THE DEFENDANT: Good afternoon, Your Honor.

THE COURT: To the extent that you are able to without handcuffs on, raise your right hand and be sworn, please.

(THEREUPON, the defendant is sworn in.)

THE COURT: State your full name for the record.

THE DEFENDANT: Mark Anthony Eubanks.

THE COURT: The purpose of placing you under oath is to apprise you that you are in a federal courtroom under oath, and I expect you to tell me the truth. If you say something today that turns out not to be the complete truth, you might face additional charges for perjury or making a false statement; do you understand that?

1                   THE DEFENDANT: Yes, Your Honor.

2                   THE COURT: Go ahead and be seated. How old are you,  
3 sir?

4                   THE DEFENDANT: Thirty-four years old.

5                   THE COURT: What is your educational background?

6                   THE DEFENDANT: I have Bachelor's degree in trade  
7 school.

8                   THE COURT: A citizen of the United States?

9                   THE DEFENDANT: Yes, Your Honor.

10                  THE COURT: You are charged with a pretty serious  
11 crime here.

12                  Is this the 10 to life version, Michael?

13                  MR. HUNTER: Yes, Your Honor.

14                  THE COURT: Conspiracy to possess with intent to  
15 distribute one kilo or more of heroin, a Schedule I controlled  
16 substance, in violation of 21 U.S.C., Sections 841(a)(1) and  
17 (b)(1)(A)(i) as well as 21 U.S.C. 846, a statutory penalty,  
18 mandatory minimum of 10 up to life, up to a \$10 million fine,  
19 five years to life of supervised release, a \$100 special  
20 assessment. Those are the statutory penalties. You are aware  
21 of that, correct?

22                  THE DEFENDANT: Yes, Your Honor.

23                  THE COURT: All right. You have had an opportunity to  
24 discuss these charges and any defenses you would have to these  
25 charges with Mr. Yeazel; is that true?

1                   THE DEFENDANT: Yes, Your Honor.

2                   THE COURT: And you have previously entered a not  
3 guilty plea at arraignment on this charge, correct?

4                   THE DEFENDANT: Correct.

5                   THE COURT: And today you are here to change your  
6 previously entered not guilty plea and to plead guilty; is that  
7 right?

8                   THE DEFENDANT: Yes, Your Honor.

9                   The Court: As you sit here today, are you under the  
10 influence of any drugs of abuse or alcohol?

11                  THE DEFENDANT: No, Your Honor.

12                  THE COURT: All right. Are you seeing anyone for a  
13 mental health issue?

14                  THE DEFENDANT: No, Your Honor.

15                  THE COURT: Are you taking any prescription  
16 medications for any reason?

17                  THE DEFENDANT: No Your Honor.

18                  THE COURT: All right. Mr. Yeazel, have you had any  
19 difficulty communicating with your client?

20                  MR. YEAZEL: No, Your Honor.

21                  THE COURT: You believe he has understood all your of  
22 counseling and advice?

23                  MR. YEAZEL: Yes, Your Honor.

24                  THE COURT: All right. Very good. Michael, would you  
25 like to outline the plea agreement for us?

1                   MR. HUNTER: Thank you, Your Honor. In the plea  
2 agreement filed with the Court, Mr. Eubanks agreed to plead  
3 guilty to Count 1 of the Indictment, that charges conspiracy to  
4 possess with intent to distribute more than one kilogram of  
5 heroin. He acknowledges the penalties that may be imposed are  
6 a mandatory minimum term of imprisonment of 10 years up to  
7 life, a fine up to \$10 million, a term of supervised release of  
8 five years up to life.

9                   He also acknowledges that due to the Information that  
10 was filed in this case pursuant to 21 United States Code,  
11 Section 851, that his sentence will be enhanced for that  
12 conviction as set forth in 21 United States Code, Section  
13 841(b). The parties also agree -- and we want to put this on  
14 the record -- that the Information that was filed pursuant to  
15 Section 851 constitutes a single conviction for purposes of  
16 that sentencing enhancement. There is more than one narcotics  
17 conviction in this case. The government is only relying on  
18 one, Your Honor.

19                   THE COURT: Very good.

20                   MR. HUNTER: The parties acknowledge that if this plea  
21 of guilty is entered and not withdrawn and Mr. Eubanks acts in  
22 accordance with the terms of the plea agreement, the United  
23 States agrees not to file additional charges against  
24 Mr. Eubanks.

25                   Mr. Eubanks also acknowledges that prior to the time of

1 sentencing, he will required to pay a \$100 special assessment.

2 He also acknowledges that by virtue of pleading guilty  
3 to Count 1, he is not the prevailing party as defined by  
4 federal law, and he waives his right to sue the United States  
5 under this agreement.

6 Mr. Eubanks also agrees to forfeit all right, title and  
7 interest to the property contained in the consent form which  
8 was attached as Exhibit A to the plea agreement. That,  
9 basically, contains firearms, ammunition and currency seized  
10 during the investigation of this case. He also agrees to  
11 execute the consent order at the time that he enters the guilty  
12 plea. I believe we have already executed that and filed it, or  
13 if we haven't, we will soon, Your Honor. The defendant agrees  
14 not to contest any judicial or administrative forfeiture as set  
15 forth in the consent order.

16 Mr. Eubanks acknowledges under this agreement, it does  
17 not protect him from a prosecution for perjury if he were to  
18 testify untruthfully or other crimes or offenses that the  
19 United States discovers by independent investigation.

20 He also acknowledges that if he fails to fully comply  
21 with the terms of the agreement, it is voidable and subject to  
22 prosecution as though the agreement had never been made.

23 The parties agree to make several recommendations to the  
24 Court regarding application of the sentencing guidelines.  
25 These are contained in Paragraph 8 of the plea agreement.

1           Specifically, the United States agrees that if the  
2 defendant continues to accept responsibility, essentially, he  
3 will be entitled to a three-level reduction in his offense  
4 level. The United States also agrees not to seek any upward  
5 departure or deviation or variance from the advisory guideline  
6 range as determined by the Probation Department, and all  
7 parties acknowledge these are simply recommendations and in no  
8 way bind the District Court.

9           Mr. Eubanks further acknowledges that the U.S.  
10 Sentencing Guidelines are no longer mandatory, that they are  
11 advisory, and the Court has the jurisdiction and authority to  
12 impose any sentence up to the statutory maximum.

13           Mr. Eubanks also acknowledges that the Court has not yet  
14 determined a sentence, and so any estimate of a probable  
15 sentencing range he may have received is a prediction and not a  
16 promise, is not binding on the United States, the Probation  
17 Department or the Court.

18           In this agreement, the United States expressly makes no  
19 promise or representation concerning the sentence the defendant  
20 will receive, and he acknowledges he cannot withdraw his guilty  
21 plea based upon the actual sentence in this case.

22           The parties further agree if the Court refuses to accept  
23 any provisions of the plea agreement, other than those  
24 recommendations mentioned in Paragraph 8, neither party will be  
25 bound by it and Mr. Eubanks can withdraw his guilty plea, and

1       in turn, the U.S. Attorney's office can proceed with  
2       prosecution without prejudice.

3               There are no additional promises or agreements or  
4       conditions in this case, although I think counsel should  
5       approach briefly.

6               THE COURT: Very good.

7                                - - -

8       Thereupon, the following proceeding was held at sidebar:

9               MR. HUNTER: [REDACTED]

10       [REDACTED]

11       [REDACTED]

12       [REDACTED]

13       [REDACTED]

14       [REDACTED]

15       [REDACTED]

16       [REDACTED]

17       [REDACTED]

18               THE COURT: [REDACTED]

19       [REDACTED]

20               MR. YEAZEL: [REDACTED]

21       [REDACTED]

22               THE COURT: [REDACTED]

23       [REDACTED]

24               MR. HUNTER: [REDACTED]

25       [REDACTED]

1 MR. YEAZEL: [REDACTED]

2 [REDACTED]

3 THE COURT: [REDACTED]

4 MR. YEAZEL: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 THE COURT: [REDACTED]

8 MR. YEAZEL: [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 MR. HUNTER: [REDACTED]

16 [REDACTED]

17 MR. YEAZEL: [REDACTED]

18 [REDACTED]

19 THE COURT: [REDACTED]

20 MR. YEAZEL: [REDACTED]

21 [REDACTED]

22 THE COURT: [REDACTED]

23 - - -

24 Thereupon, the following proceedings were had in open  
25 court:

1                   MR. HUNTER: Your Honor, for the record, for the  
2 statement of facts, the United States has provided a copy to  
3 the Court. I believe the defense has made a couple of  
4 corrections to it, but we propose to mark that as an exhibit  
5 and attach it to the record in the case.

6                   THE COURT: Very well. Do you agree to the  
7 stipulation?

8                   MR. YEAZEL: We agree to the stipulation, Your Honor.

9                   THE COURT: Very good. The statement of facts will be  
10 appended as Exhibit A to the plea agreement.

11                  Mr. Eubanks, you read the 11-paragraph plea agreement  
12 before you signed it?

13                  THE DEFENDANT: Yes, Your Honor.

14                  THE COURT: You had the opportunity to discuss any  
15 defenses that you would have as well as the terms of this plea  
16 agreement with Mr. Yeazel, correct?

17                  THE DEFENDANT: That's correct, Your Honor.

18                  THE COURT: You have read the statement of facts that  
19 we have made two adjustments to here?

20                  THE DEFENDANT: Yes, Your Honor.

21                  THE COURT: And you would otherwise agree with the  
22 statement of facts?

23                  THE DEFENDANT: That's correct.

24                  THE COURT: Did you sign this plea agreement on the  
25 5th of February, 2016?

1                   THE DEFENDANT: Yes, Your Honor.

2                   THE COURT: All right. At the time you signed it, you  
3 thoroughly understood it?

4                   THE DEFENDANT: Correct, Your Honor.

5                   THE COURT: Has anyone threatened you in any way, or  
6 do you feel coerced in any way to enter into this guilty plea?

7                   THE DEFENDANT: No, Your Honor.

8                   THE COURT: I need to make sure you are entering into  
9 this guilty plea of your own free will and volition; is that  
10 accurate?

11                  THE DEFENDANT: Yes, Your Honor.

12                  THE COURT: Okay. The sentencing guidelines are  
13 advisory. I will consider them because I must consider them,  
14 but I don't have to follow them. Do you understand that?

15                  THE DEFENDANT: Yes, Your Honor.

16                  THE COURT: Supervised release would be a period of  
17 post-incarceration supervision by the Court's Probation  
18 Department. There are standard conditions that everyone on  
19 supervised release must follow. There may be some special  
20 additional conditions that would apply to you because of the  
21 nature of the offense. If you violate supervised release, one  
22 of the options is to have you brought back before the Court to  
23 answer to the violations, and if you wish to challenge the  
24 violations, you are entitled to put witnesses on and have the  
25 government prove that you violated them. But if it is proven

1 that you violated them, then one of the things that I can do is  
2 revoke and I can send you back to prison and not order any  
3 credit for time previously served on supervised release as well  
4 as adding on a new term of supervised release. Do you  
5 understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You understand at this point, even now,  
8 you have the right to plead not guilty and persist in that not  
9 guilty plea?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If you were to do so, you would have the  
12 right to a jury trial; do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: At every stage of the proceedings, you  
15 have the right to be represented by counsel. And you have no  
16 burden of proof. Instead, the government has the entire burden  
17 to prove each and every one of the following elements beyond a  
18 reasonable doubt. So, in order to convict you at trial, the  
19 government would have to prove that Mark A. Eubanks agreed with  
20 at least one other person to possess with the intent to  
21 distribute more than one kilo of heroin, a Schedule I  
22 controlled substance. They would have to prove that the  
23 conspiracy that's described in this indictment was willfully  
24 formed and existed at or about the dates and times alleged.  
25 They would have to prove Mark A. Eubanks willfully became a

1 member of the conspiracy. And they would have to prove that an  
2 act or your actions were in furtherance of this conspiracy that  
3 occurred on or about the dates stated in the indictment in the  
4 Southern District of Ohio, which is the federal jurisdiction of  
5 this Court.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Through counsel, you have right to  
9 confront and cross-examine the government's witnesses that  
10 would be called to testify against you. You have a Fifth  
11 Amendment right to remain silent at trial. And if you elect to  
12 do so, the government would still put on its evidence.  
13 However, they couldn't get up at the end of the case and argue  
14 to the jury that your silence was evidence of guilt. Do you  
15 understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If you wish to put on your own witnesses  
18 in your defense, you would have the right to subpoena those  
19 witnesses and have the Court enforce those subpoenas and to  
20 have your witnesses delivered to court. Do you understand  
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand before I can accept your  
24 guilty plea, you have got to waive or give up all of the rights  
25 that I just told you about?

1           THE DEFENDANT: Yes, Your Honor.

2           THE COURT: Is that you want to do at this time?

3           THE DEFENDANT: Yes, Your Honor.

4           THE COURT: How do you plead to this conspiracy  
5 charge?

6           THE DEFENDANT: Guilty.

7           THE COURT: Based upon a review of the statement of  
8 facts and based upon your answers here today, you appear to be  
9 alert and oriented times three. The statement of facts meets  
10 each of the essential elements that the government must prove  
11 beyond a reasonable doubt.

12          The Court will order a Presentence Investigation. You  
13 will be back in court probably ten to 12 weeks from now for  
14 sentencing. But in the meantime, you and Mr. Yeazel will have  
15 an opportunity to meet with a Probation Officer who is going to  
16 write the report. You will provide the background answers and  
17 information that they are looking for. If there are objections  
18 to be raised, Mr. Yeazel will raise them on your behalf. If  
19 they remain at sentencing, I will deal with them on the day of  
20 sentencing. Do you understand?

21          THE DEFENDANT: Yes, Your Honor.

22          THE COURT: Any questions?

23          THE DEFENDANT: No, Your Honor.

24          THE COURT: Okay. The Court is going to accept the  
25 guilty plea. Find that it is a knowing, intelligent and

15

1 voluntary plea supported by an independent basis in fact that  
2 contains each of the essential elements of the offense. You  
3 are now adjudged guilty of this federal felony, and the Court  
4 orders the Presentence Investigation. We will see you in about  
5 two-and-a-half or three months, all right?

6 THE DEFENDANT: Yes, Your Honor.

7 COURTROOM DEPUTY CLERK: All rise. We are adjourned.

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1                   C E R T I F I C A T E  
2

3                   I, Georgina Wells, do hereby certify that the  
4 foregoing is a true and correct transcript of the proceedings  
5 before the Honorable Michael H. Watson, Judge, in the United  
6 States District Court, Southern District of Ohio, Eastern  
7 Division, on the date indicated, reported by me in shorthand  
8 and transcribed by me or under my supervision.

9

10

11                   s/Georgina Wells

12

13                   Georgina Wells,  
14                   Official Federal Court Reporter

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